

SECOND REGULAR SESSION

HOUSE BILL NO. 2004

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MYERS, CRAWFORD, BLACK, MOORE, REINHART, MERIDETH, BARNITZ, HANAWAY (Co-sponsors), LEGAN, LUETKEMEYER, KING, HENDERSON, NAEGER, PURGASON, HUNTER, BEARDEN, BYRD, DEMPSEY, HENDRICKSON, HAMPTON, SECREST, BARTELSMEYER, JETTON, ROBIRDS, RECTOR, COOPER, TOWNLEY, SCHWAB, LINTON, LONG, MAY (149) AND BERKSTRESSER.

Read 1st time February 20, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4652L.01I

AN ACT

To repeal section 640.010, RSMo, and to enact in lieu thereof two new sections relating to the environmental regulation consistency act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 640.010, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 640.010 and 640.020, to read as follows:

640.010. 1. There is hereby created a department of natural resources in charge of a director appointed by the governor, by and with the advice and consent of the senate. The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. He shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and his decisions shall be subject to appeal to the board or commission on request of the board or commission [or by affected parties]. The director shall recommend policies to the various boards and commissions assigned to the department to achieve effective and coordinated environmental control and natural resource conservation policies.

2. The director shall appoint directors of staff to service each of the policy making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which he is assigned

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 and his appointment shall be approved by the board to which he is assigned and he shall be
16 removed or reassigned on their request in writing to the director of the department. All other
17 employees of the department and of each board and commission assigned to the department shall
18 be appointed by the director of the department in accord with chapter 36, RSMo, and shall be
19 assigned and may be reassigned as required by the director of the department in such a manner
20 as to provide optimum service, efficiency and economy.

21 3. The air conservation commission, chapter 203, RSMo, and others, the clean water
22 commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department
23 of natural resources. The governor shall appoint the members of these bodies in accord with the
24 laws establishing them, with the advice and consent of the senate. The bodies hereby transferred
25 shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies
26 transferred to their jurisdiction. All the powers, duties and functions of the state environmental
27 improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the
28 air conservation commission. All the powers, duties and functions of the water resources board,
29 chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission
30 and the board is abolished. No member of the clean water commission shall receive or shall
31 have received, during the previous two years from the date of his appointment, a significant
32 portion of his income directly or indirectly from permit holders or applicants for a permit under
33 the jurisdiction of the clean water commission. The state park board, chapter 253, RSMo, is
34 transferred to the department of natural resources by type I transfer.

35 4. All the powers, duties and functions of the state soil and water districts commission,
36 chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

37 5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and
38 others, are transferred by type I transfer to the department of natural resources. All the powers,
39 duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the
40 department of natural resources by type I transfer and the authority is abolished. All the powers,
41 duties and functions of the state oil and gas council, chapter 259, RSMo, and others are
42 transferred to the department of natural resources by type II transfer. The director of the
43 department shall appoint a state geologist who shall have the duties to supervise and coordinate
44 the work formerly done by the departments or authorities abolished by this subsection, and shall
45 provide staff services for the state oil and gas council.

46 6. All the powers, duties and functions of the land reclamation commission, chapter 444,
47 RSMo, and others, are transferred to the department of natural resources by type II transfer. All
48 necessary personnel required by the commission shall be selected, employed and discharged by
49 the commission. The director of the department shall not have the authority to abolish positions.

50 7. The functions performed by the division of health in relation to the maintenance of

51 a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for
52 licensing and regulating solid waste management systems and plans are transferred by type I
53 transfer to the department of natural resources.

54 8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is
55 transferred to the department of natural resources by type II transfer. The council shall consist
56 of representatives of the following state agencies: department of agriculture; department of
57 conservation; office of administration; department of natural resources; department of economic
58 development; department of social services; department of transportation; and the University of
59 Missouri.

60 (2) The council shall function as provided in chapter 258, RSMo, except that the
61 department of natural resources shall provide all staff services as required by the council
62 notwithstanding the provisions of sections 258.030 and 258.040, RSMo, and all personnel and
63 property of the council are hereby transferred by type I transfer to the department of natural
64 resources and the office of executive secretary to the council is abolished.

**640.020. 1. Other provisions of law notwithstanding, the department of natural
2 resources, including any board or commission assigned to the department of natural
3 resources in accordance with section 640.010 that is authorized by statute to adopt rules,
4 shall have the authority to promulgate such rules, pursuant to chapter 536, RSMo, to
5 ensure that the state of Missouri is in compliance with the provisions of any applicable
6 federal statutes and federal regulations.**

7 (1) The clean air commission shall have the authority to promulgate such rules to
8 establish standards, guidelines and requirements to ensure that the state of Missouri is in
9 compliance with the substantive provisions of the federal Clean Air Act, as amended,
10 relating to air pollution control;

11 (2) The clean water commission shall have the authority to promulgate such rules
12 to establish standards, guidelines and requirements to ensure that the state of Missouri is
13 in compliance with the substantive provisions of the federal Clean Water Act, as amended,
14 relating to water pollution control, and subtitle I of the federal Resource Conservation and
15 Recovery Act, as amended, relating to underground storage tanks;

16 (3) The hazardous waste management commission shall have the authority to
17 promulgate such rules to establish standards, guidelines and requirements to ensure that
18 the state of Missouri is in compliance with the substantive provisions of the federal
19 Resource Conservation and Recovery Act, as amended, relating to hazardous waste
20 management;

21 (4) The land reclamation commission shall have the authority to promulgate such
22 rules to establish standards, guidelines and requirements to ensure that the state of

23 Missouri is in compliance with the substantive provisions of the federal Surface Mining
24 Control and Reclamation Act, as amended, relating to surface mining and land
25 reclamation;

26 (5) The safe drinking water commission shall have the authority to promulgate such
27 rules to establish standards, guidelines and requirements to ensure that the state of
28 Missouri is in compliance with the substantive provisions of the federal Safe Drinking
29 Water Act, as amended, relating to drinking water systems; and

30 (6) The department shall have the authority to promulgate such rules to establish
31 standards, guidelines and requirements to ensure that the state of Missouri is in
32 compliance with the substantive provisions of subtitle D of the federal Resource
33 Conservation and Recovery Act, as amended, relating to solid waste management.

34 2. The rules promulgated by the department or any commission or board assigned
35 to the department shall not be any stricter than the scope or subject matter of federal
36 regulations under the provisions of the applicable federal statutes and federal regulations,
37 except as provided in subsection 3 of this section. The scope and subject matter of federal
38 regulation for purposes of this subsection is that set forth in any and all applicable federal
39 statutes, regulations, guidance documents and policy documents. If there are no federal
40 statutes or regulations with respect to a particular subject matter, then the scope of federal
41 regulation is zero and the department or any commission or board assigned to the
42 department shall not adopt regulations with respect to that subject matter, except as
43 provided in subsection 3 of this section.

44 3. The department or any commission or board assigned to the department and
45 listed in subsection 1 of this section may adopt rules that are stricter than the scope or
46 subject matter of federal regulation if the rulemaking body makes specific findings, based
47 on competent and substantial evidence in the administrative record, that:

48 (1) Specific circumstances or conditions in the state of Missouri are causing, or have
49 the potential to cause, specific harm to human health and the environment; and

50 (2) Either:

51 (a) The specific circumstances or conditions are not subject to regulation by any
52 applicable federal statute or federal regulation; or

53 (b) The existing federal statutes or regulations are not sufficient to adequately
54 protect human health and the environment in the state of Missouri; and

55 (3) A more restrictive rule is necessary to address the specific circumstance or
56 condition in order to prevent or alleviate the specific harm caused to human health and the
57 environment.

58 4. For any rule promulgated pursuant to subsection 3 of this section, the

59 department, commission or board shall specifically enumerate in the administrative record
60 and shall publish in the Missouri Register, along with the notice of proposed rulemaking,
61 findings of fact relative to the specific circumstances or conditions causing harm, the
62 nature and scope of the specific harm to human health and the environment, and the
63 health-based or science-based reasons justifying why the adoption of a more restrictive rule
64 will prevent or alleviate the specific harm to human health and the environment.

65 **5.** For any rule promulgated pursuant to subsection 3 of this section, the fiscal notes
66 required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the
67 requirements imposed by those sections, a discussion and explanation of the consideration
68 by the department, commission or board of the effects of human health and the
69 environment, economics, pollution prevention and the effectiveness and cost of reasonably
70 available control methods for the proposed more restrictive rule.

71 **6.** Any rule that is more restrictive than federal statutes or federal regulations that
72 is adopted by the department or a commission or board assigned to the department without
73 complying with the procedures set forth in this section is void.

74 **7.** Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,
75 that is created under the authority delegated in this section shall become effective only if
76 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
77 applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
78 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
79 to review, to delay the effective date or to disapprove and annul a rule are subsequently
80 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
81 adopted after August 28, 2002, shall be invalid and void.

82 **8.** This section may be referred to as the "Environmental Regulation Consistency
83 Act".